

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

MELISSA MAYLE,
for Brian Joseph Hardy,

Petitioner,

v.

Civil Action No. 3:07CV105
(JUDGE BAILEY)

COMMISSIONER OF
SOCIAL SECURITY,

Respondent.

**NOTICE TO PETITIONER REGARDING THE NEED TO FILE HER BRIEF IN
SUPPORT OF HER CLAIM FOR RELIEF WITHIN THIRTY DAYS OF THE DATE OF
THIS NOTICE OR FACE POSSIBLE DISMISSAL OF HER CLAIM**

Notice is hereby given to the *pro se* petitioner, Mary M. Mitchell, for Brian Joseph Hardy, that her complaint against the Commissioner of Social Security may be dismissed if she does not file her brief in support of her claim for relief within thirty (30) days of the date of this notice.

Melissa Mayle, for Brian Joseph Hardy, filed her complaint against the Social Security Administration on August 13, 2007. The Commissioner filed an Answer and a copy of the administrative record on October 18, 2007. Local Rule of General Procedure 83.12(b) provides that “Within thirty days after the defendant has filed an answer and a complete copy of the administrative record, the plaintiff shall file a brief in support of his or her claim(s) for relief.” Since the Commissioner filed an answer on October 18, 2007, Plaintiff’s brief was due on November 18, 2007. Plaintiff has not yet filed her brief. Plaintiff’s brief is now more than three (3) months late.

The Fourth Circuit has ruled that *pro se* litigants appealing from a denial of Social Security benefits must receive notice before the court takes dispositive action against them. *Burrow v. Shalala*, 1993 U.S. App. LEXIS 26800 (4th Cir.); *see also Allen v. Social Security Administration*,

2005 U.S. Dist. LEXIS 40266 (D.S.C.); *Tipton v. Massanari*, 2001 U.S. Dist. LEXIS 14093 (E.D. Va.). This notice must include alerting the *pro se* party of his right to file materials with the court and that the failure to do so could result in summary disposition against him. *Roseboro v. Garrison*, 528 F.2D 309, 310 (4th Cir. 1975). Furthermore, the notice must be understandable to a lay party. *Id.* the district court's failure to give such notice before entry of judgment represents grounds for reversal. *Id.*

NOTICE: Notice is hereby given to the *pro se* petitioner, Melissa Mayle, for Brian Joseph Hardy, that she must file her brief in support of her claim within thirty (30) days of the date of this notice. If she fails to do so, I will recommend her complaint be dismissed for failure to comply with the Local Rules.

IT IS SO ORDERED.

The Clerk of the Court is directed to send a copy of this Order to the *pro se* Petitioner and all counsel of record.

DATED: February 22, 2008

/s/ James E. Seibert
JAMES E. SEIBERT
UNITED STATES MAGISTRATE JUDGE